

Senate File 194 - Introduced

SENATE FILE _____
BY McKIBBEN, PUTNEY, BEHN, GASKILL,
NOBLE, SEYMOUR, McKINLEY, ZAUN,
WARD, HARTSUCH, BOETTGER, ANGELO,
WIECK, and HAHN

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating the penalty of death for the commission of murder
2 in the first degree, kidnapping, and sexual abuse against the
3 same minor, providing a penalty, and providing an effective
4 date.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 2416XS 82
7 jm/je/5

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1 1 Section 1. Section 13B.4, Code 2007, is amended by adding
1 2 the following new subsection:
1 3 NEW SUBSECTION. 6A. The state public defender shall
1 4 perform all of the following duties with respect to the
1 5 appointment of counsel for indigent persons in cases in which
1 6 a sentence of death may be or is to be imposed:
1 7 a. Provide or contract with attorneys for appointment as
1 8 lead counsel and cocounsel to provide legal services in cases
1 9 where a person is charged with murder in the first degree,
1 10 kidnapping, and sexual abuse under section 902.15, and the
1 11 state has given notice of intent to seek the death penalty or
1 12 in cases in which a sentence of death is to be imposed.
1 13 b. Conduct or sponsor specialized training programs for
1 14 attorneys representing persons who may be executed.
1 15 Sec. 2. NEW SECTION. 602.10111A QUALIFICATIONS OF
1 16 COUNSEL IN DEATH PENALTY CASES.
1 17 The supreme court shall prescribe rules which establish
1 18 minimum standards and procedures by which attorneys may become
1 19 qualified to provide legal services as lead counsel in cases
1 20 in which a sentence of death may be or is to be imposed.
1 21 Sec. 3. NEW SECTION. 812A.1 PROCEDURE TO DETERMINE
1 22 SANITY OF CONDEMNED INMATE.
1 23 1. At any time prior to execution of an inmate under
1 24 section 902.1, if the director of the department of
1 25 corrections or the counsel for a person who is under a
1 26 sentence of execution has cause to believe that the inmate is
1 27 suffering from such a diseased or deranged condition of the
1 28 mind as to prevent the defendant from knowing the nature and
1 29 quality of the act the defendant has been convicted of, or
1 30 from understanding that trial on the offense has taken place
1 31 and that execution proceedings are about to take place, or to
1 32 otherwise cause the defendant to lack the capacity to
1 33 understand the sentence which has been imposed and to
1 34 participate in any legal proceedings relating to the sentence,
1 35 the director or counsel may file a request with the court that
2 1 issued the warrant for execution for a determination of the
2 2 inmate's sanity. If the district court determines that there
2 3 is not sufficient reason to believe that the inmate is insane,
2 4 the court shall enter an order denying the request and shall
2 5 state the grounds for denying the request. If the court
2 6 believes that there is sufficient reason to believe that the
2 7 inmate is insane, the court shall suspend the execution and
2 8 conduct a hearing to determine the sanity of the inmate.
2 9 2. At the hearing, the court shall determine the issue of
2 10 the inmate's sanity. Prior to the hearing, the court shall
2 11 appoint two licensed physicians or licensed psychologists, or
2 12 one licensed physician and one licensed psychologist, who are
2 13 qualified by training and practice, for purposes of conducting
2 14 a psychiatric or psychological examination of the inmate. The
2 15 physicians or psychologists shall examine the inmate and

2 16 report any findings in writing to the court within ten days
2 17 after the order of examination is issued. The inmate shall
2 18 have the right to present evidence and cross-examine any
2 19 witnesses at the hearing. Any statement made by the inmate
2 20 during the course of any examination provided for in this
2 21 section, whether or not the inmate consents to the
2 22 examination, shall not be admitted into evidence against the
2 23 inmate in any criminal proceeding for purposes other than a
2 24 determination of the inmate's sanity.

2 25 3. If, at the conclusion of a hearing held pursuant to
2 26 this section, the court determines that the inmate is sane,
2 27 the court shall enter an order setting a date for the inmate's
2 28 execution, which shall be carried into effect in the same
2 29 manner as provided in the original sentence. A copy of the
2 30 order shall be sent to the director of the department of
2 31 corrections and the governor.

2 32 4. If, at the conclusion of a hearing held pursuant to
2 33 this section, the court determines that the inmate is insane,
2 34 the court shall suspend the execution until further order. At
2 35 any time after issuance of the order, if the court has
3 1 sufficient reason to believe that the inmate has become sane,
3 2 the court shall again determine the sanity of the inmate as
3 3 provided by this section. Proceedings pursuant to this
3 4 section may continue to be held at such times as the court
3 5 orders until it is either determined that the inmate is sane
3 6 or incurably insane.

3 7 Sec. 4. NEW SECTION. 814.28 REVIEW OF DEATH SENTENCE.
3 8 1. In a case in which a sentence of death is imposed, the
3 9 supreme court shall automatically review the judgment and
3 10 sentence. The court's review of the case shall be de novo.
3 11 The case shall not be transferred to the court of appeals.

3 12 2. A review by the supreme court of a judgment and
3 13 sentence imposing the punishment of death has priority over
3 14 all other criminal and other actions pending before the
3 15 supreme court.

3 16 3. The supreme court shall review the trial and judgment,
3 17 and shall separately review the sentencing proceeding. Upon
3 18 determining that errors did not occur at the trial requiring
3 19 reversal or modification of the judgment, the supreme court
3 20 shall proceed to determine if the sentence of death is
3 21 lawfully imposed. In its review of the sentencing proceeding
3 22 the supreme court shall determine all of the following:
3 23 a. Whether the sentence of death was imposed capriciously
3 24 or under the influence of prejudice or other arbitrary factor.
3 25 b. Whether the special verdicts returned under section
3 26 901.11 are supported by the evidence.
3 27 c. Whether the sentence of death is excessive or
3 28 disproportionate to the penalty imposed in similar cases,
3 29 considering both the crime and the defendant.

3 30 4. If the supreme court determines that the sentence of
3 31 death was not lawfully imposed, the court shall set aside the
3 32 sentence and shall remand the case to the trial court for a
3 33 second sentencing proceeding to determine if the imposition of
3 34 death is warranted.

3 35 5. If the supreme court affirms the judgment and sentence
4 1 of death, the clerk of the supreme court shall certify the
4 2 judgment of the supreme court under the seal of the court to
4 3 the clerk of the trial court.

4 4 Sec. 5. Section 815.10, Code 2007, is amended by adding
4 5 the following new subsection:
4 6 NEW SUBSECTION. 1A. If two attorneys have not already
4 7 been appointed pursuant to section 13B.4 or 13B.9, the court
4 8 shall appoint, for each indigent person who is charged with
4 9 murder, kidnapping, and sexual abuse under section 902.15, and
4 10 in which a notice of intent to seek the death penalty has been
4 11 filed, two attorneys who are qualified under section
4 12 602.10111A to represent the person in the proceedings and in
4 13 all state legal proceedings which take place from the time the
4 14 person is indicted or arraigned until the person is sentenced
4 15 on the charge. In addition, if at any point in federal
4 16 postconviction proceedings an indigent person is not afforded
4 17 court-appointed counsel, the state shall provide counsel to
4 18 the person to present any claims determined meritorious by the
4 19 federal court if the person is not otherwise represented by
4 20 legal counsel. Only private attorneys and public defenders
4 21 who are qualified to provide representation in cases in which
4 22 the death penalty may be imposed are eligible for appointment
4 23 or assignment to a case in which the death penalty may be
4 24 imposed.

4 25 Sec. 6. NEW SECTION. 901.11 MURDER PROCEEDINGS ==
4 26 REQUEST FOR DEATH PENALTY == PENALTY PROCEEDINGS.

4 27 1. If a notice of intent to seek the death penalty has
4 28 been filed, objections to the imposition of the death penalty
4 29 based upon allegations that a defendant was mentally retarded
4 30 or mentally ill at the time of the commission of the offense
4 31 shall be raised within the time provided for the filing of
4 32 pretrial motions under rule of criminal procedure 2.11, Iowa
4 33 court rules. The court may, for good cause shown, allow late
4 34 filing of the motion. Hearing on the motion shall be held
4 35 prior to trial and the burden of proof shall be on the
5 1 defendant to prove mental retardation or mental illness by a
5 2 preponderance of the evidence. However, a rebuttable
5 3 presumption of mental retardation arises if a defendant has an
5 4 intelligence quotient of seventy or below. If the court finds
5 5 that the defendant is mentally retarded, the defendant, if
5 6 convicted of murder, kidnapping, and sexual abuse under
5 7 section 902.15, shall not be sentenced to death but shall be
5 8 sentenced to life imprisonment in the manner provided in
5 9 section 902.1, subsection 1. A finding by the court that the
5 10 evidence presented by the defendant at the hearing does not
5 11 preclude the imposition of the death penalty under this
5 12 section and section 902.15 shall not preclude the introduction
5 13 of evidence of mental retardation or mental illness during the
5 14 penalty proceeding. If the court finds that evidence of
5 15 mental retardation or mental illness does not preclude
5 16 imposition of the death penalty, evidence of mental
5 17 retardation or mental illness may be reviewed by the jury in
5 18 the penalty proceeding and the jury shall not be informed of
5 19 the finding in the initial proceeding at any time during the
5 20 penalty proceeding.

5 21 2. If at the trial on a charge of murder, kidnapping, and
5 22 sexual abuse under section 902.15, the state intends to
5 23 request that the death penalty be imposed under section 902.1,
5 24 subsection 2, the prosecutor shall file a notice of intent to
5 25 seek the death penalty, at the time of and as part of the
5 26 information or indictment filed in the case.

5 27 3. If a notice of intent to seek the death penalty has
5 28 been filed, the trial shall be conducted in bifurcated
5 29 proceedings before the same trier of fact. During the initial
5 30 proceeding, the jury, or the court, if the defendant waives
5 31 the right to a jury trial, shall decide only whether the
5 32 defendant is guilty or not guilty of murder, kidnapping, and
5 33 sexual abuse under section 902.15.

5 34 a. If, in the initial proceeding, the court or jury finds
5 35 the defendant guilty of, or the defendant pleads guilty to, an
6 1 offense other than murder, kidnapping, and sexual abuse under
6 2 section 902.15, the court shall sentence the defendant in
6 3 accordance with the sentencing procedures set forth in rule of
6 4 criminal procedure 2.23, Iowa court rules, and chapters 901
6 5 through 909, which are applicable to the offense.

6 6 b. If the court or jury finds the defendant guilty of, or
6 7 the defendant pleads guilty to, murder, kidnapping, and sexual
6 8 abuse under section 902.15, but the prosecuting attorney
6 9 waives the death penalty, the court shall sentence the
6 10 defendant to life imprisonment in accordance with the
6 11 sentencing procedures set forth in rule of criminal procedure
6 12 2.23, Iowa court rules, and chapters 901 through 909, which
6 13 are otherwise applicable to convictions of murder in the first
6 14 degree, kidnapping, and sexual abuse.

6 15 c. If the court or jury finds the defendant guilty of
6 16 murder, kidnapping, and sexual abuse under section 902.15, or
6 17 a defendant enters a plea of guilty in the initial proceeding,
6 18 and the prosecuting attorney does not waive imposition of the
6 19 death penalty, a penalty proceeding shall be held in the
6 20 manner provided in subsections 4 through 12.

6 21 4. No sooner than twenty-four hours after a verdict of
6 22 guilty or a plea of guilty to the charge of murder,
6 23 kidnapping, and sexual abuse under section 902.15 is returned
6 24 in the initial proceeding, a penalty proceeding shall be held
6 25 to determine whether the defendant shall be sentenced to death
6 26 or to life imprisonment. The proceeding shall be conducted in
6 27 the trial court before the trial jury, or the court if the
6 28 defendant has waived the right to a jury trial or has waived
6 29 the right for the proceeding to be before the trial jury.
6 30 Both the state and the defendant shall have the right to
6 31 present opening statements at the commencement of the penalty
6 32 proceedings. In the proceeding, evidence relevant to the
6 33 existence of any aggravating or mitigating circumstances may
6 34 be presented as follows:

6 35 a. The state or the defendant may present evidence
7 1 relevant to the conviction of the criminal offenses enumerated
7 2 in section 902.15 and any aggravating circumstances other than

7 3 juvenile delinquency adjudications for offenses which carry
7 4 penalties equivalent to the penalties imposed for simple or
7 5 serious misdemeanors. The state may introduce evidence of the
7 6 actual harm caused by the commission of the murder,
7 7 kidnapping, and sexual abuse under section 902.15, including
7 8 but not limited to evidence relating to the life of the victim
7 9 and the impact of the loss of the victim to the victim's
7 10 family and society.

7 11 b. The defendant may present evidence that the defendant
7 12 was mentally retarded at the time of the commission of the
7 13 offense. The burden of proof shall be on the defendant to
7 14 prove mental retardation by a preponderance of the evidence.
7 15 However, a rebuttable presumption of mental retardation arises
7 16 if a defendant has an intelligence quotient of seventy or
7 17 below.

7 18 c. The state or the defendant may present evidence
7 19 relevant to any mitigating circumstances which may exist.
7 20 Mitigating circumstances may include the following
7 21 circumstances:

7 22 (1) The defendant was under the influence of an extreme
7 23 mental or emotional disturbance insufficient to constitute a
7 24 defense.

7 25 (2) The age of the defendant at the time of the murder.

7 26 (3) The defendant's capacity to appreciate the
7 27 wrongfulness of the defendant's conduct and to conform that
7 28 conduct to the requirements of law was significantly impaired
7 29 as a result of a mental disease or defect or mental
7 30 retardation, but not to a degree sufficient to constitute a
7 31 defense.

7 32 (4) The defendant has no significant history of prior
7 33 adult criminal activity.

7 34 (5) The defendant acted under extreme duress or under the
7 35 substantial domination of another person.

8 1 (6) The defendant did not directly commit the murder,
8 2 kidnapping, and sexual abuse and the defendant did not intend
8 3 to kill or anticipate that lethal force would be used.

8 4 (7) Any other factor which is relevant to the defendant's
8 5 character or record or to the circumstances of the offense.

8 6 d. The state and the defendant or the defendant's counsel
8 7 shall be permitted to present and cross-examine witnesses and
8 8 present arguments for or against a sentence of death.
8 9 Evidence regarding aggravating and mitigating circumstances
8 10 shall not be governed by the rules governing admissibility of
8 11 evidence, except that introduction of evidence secured in
8 12 violation of the Constitution of the United States or of the
8 13 Constitution of the State of Iowa shall not be permitted.

8 14 5. At the conclusion of presentation of evidence in the
8 15 penalty proceeding, the state and the defendant or the
8 16 defendant's counsel shall be permitted to make closing
8 17 arguments, including any rebuttal arguments, in the same
8 18 manner as in the initial proceeding and the following issues
8 19 shall be determined by the jury or the court, if there is no
8 20 jury:

8 21 a. Whether the aggravating circumstance or circumstances
8 22 have been established beyond a reasonable doubt and outweigh
8 23 any one or more mitigating circumstances.

8 24 b. Whether the defendant shall be sentenced to death.

8 25 6. A recommendation for a sentence of death shall not be
8 26 permitted if the recommendation is based on the race, color,
8 27 religious beliefs, national origin, or sex of the defendant or
8 28 of any victim. After submission of the issues, but prior to
8 29 the return of a finding in the penalty proceeding, if the
8 30 matter is tried before a jury, the court shall instruct the
8 31 jury that in considering whether a sentence of death is
8 32 justified, it shall not consider race, color, religious
8 33 beliefs, national origin, or sex of the defendant or of any
8 34 victim. The court shall further instruct the jury that it
8 35 shall not return a sentence of death unless it concludes that
9 1 such a sentence would be recommended no matter what the race,
9 2 color, religious beliefs, national origin, or sex of the
9 3 defendant or of any victim may be.

9 4 7. After submission of the issues, but prior to the
9 5 commencement of the jury deliberations in the penalty
9 6 proceeding, the court shall instruct the jury that if the
9 7 defendant is not sentenced to death, the court is required by
9 8 law to impose a sentence of imprisonment until death without
9 9 parole. The court shall further instruct the jury that the
9 10 sentence of imprisonment until death without parole is
9 11 required by law if the jury fails to reach a unanimous verdict
9 12 recommending a sentence of death.

9 13 8. Concurrently with the return of the findings on the

9 14 issues submitted under subsection 5, the jury, or the court if
9 15 there is no jury, shall return special verdicts as follows:
9 16 a. Which aggravating circumstances were established beyond
9 17 a reasonable doubt and were considered in reaching the
9 18 verdict.
9 19 b. Which mitigating circumstances were established and
9 20 were considered in reaching the verdict returned on the issue
9 21 specified in subsection 5, paragraph "a".
9 22 9. If the jury, or the court if there is no jury, returns
9 23 a unanimous affirmative finding on each of the issues
9 24 submitted under subsection 5, paragraphs "a" and "b", the
9 25 court shall enter a judgment of conviction and shall sentence
9 26 the defendant to death as provided in section 902.1,
9 27 subsection 2.
9 28 10. However, if evidence that the defendant was not a
9 29 major participant in the commission of the murder, kidnapping,
9 30 and sexual abuse under section 902.15, and that the
9 31 defendant's conduct did not manifest a reckless indifference
9 32 to human life is presented to the jury, or the court if there
9 33 is no jury, the jury or the court shall also return a special
9 34 verdict on the issue. If the jury unanimously determines, or
9 35 the court, if there is no jury, finds that a preponderance of
10 1 evidence exists that shows that the defendant was not a major
10 2 participant in the commission of the murder, kidnapping, and
10 3 sexual abuse under section 902.15, and that the defendant's
10 4 conduct did not manifest a reckless indifference to human
10 5 life, the court shall enter a judgment of conviction and shall
10 6 sentence the defendant to life imprisonment as provided in
10 7 section 902.1, subsection 1, even if the jury or the court
10 8 returns unanimous affirmative findings on each of the issues
10 9 submitted under subsection 5.
10 10 11. If the jury, or the court if there is no jury, returns
10 11 a negative finding on any of the issues submitted under
10 12 subsection 5, paragraphs "a" and "b", the court shall enter a
10 13 judgment of conviction and shall sentence the defendant to
10 14 life imprisonment as provided in section 902.1, subsection 1.
10 15 12. After a verdict has been rendered it shall be recorded
10 16 on the jury verdict form and shall be read and recorded in
10 17 open court. The jurors shall be collectively asked by the
10 18 court whether the verdict returned is their true and correct
10 19 verdict. Even though no juror makes any declaration to the
10 20 contrary, the jury shall, if either party so requests, be
10 21 polled and each juror shall be separately asked whether the
10 22 verdict rendered by the jury foreperson is the juror's true
10 23 and correct verdict. If, upon either the collective or the
10 24 separate inquiry, any juror denies that the verdict is the
10 25 juror's verdict, the court shall refuse to accept the verdict.
10 26 The court may direct inquiry or permit inquiry by counsel to
10 27 ascertain whether any juror has been subjected to coercion or
10 28 has become confused during the jury deliberation process. The
10 29 court may, as appropriate, direct the jury to resume
10 30 deliberation in the case. If no disagreement on the verdict
10 31 is expressed by any of the jurors, the court shall discharge
10 32 the jury.
10 33 13. This section shall not apply to a defendant who was
10 34 under the age of eighteen at the time the offense was
10 35 committed.

11 1 Sec. 7. Section 902.1, Code 2007, is amended to read as
11 2 follows:

11 3 902.1 CLASS "A" FELONY.

11 4 1. Upon Except as otherwise provided in subsection 2, upon
11 5 a plea of guilty, a verdict of guilty, or a special verdict
11 6 upon which a judgment of conviction of a class "A" felony may
11 7 be rendered, the court shall enter a judgment of conviction
11 8 and shall commit the defendant into the custody of the
11 9 director of the Iowa department of corrections for the rest of
11 10 the defendant's life. Nothing in the Iowa corrections code
11 11 pertaining to deferred judgment, deferred sentence, suspended
11 12 sentence, or reconsideration of sentence applies to a sentence
11 13 of life imprisonment for a class "A" felony, and a person
11 14 convicted of a class "A" felony and sentenced to life
11 15 imprisonment shall not be released on parole unless the

11 16 governor commutes the sentence to a term of years.
11 17 2. Upon return of a plea or verdict of guilty to the
11 18 offense of murder in the first degree, kidnapping, and sexual
11 19 abuse under section 902.15, and a return of a verdict in favor
11 20 of a sentence of death in a penalty proceeding conducted as
11 21 provided in section 901.11, the court shall enter a judgment
11 22 of conviction and shall commit the defendant into the custody
11 23 of the director of the Iowa department of corrections. The
11 24 sentence shall be carried out by the administration of a

11 25 lethal injection pursuant to rules adopted by the board of
11 26 corrections. If a defendant, for whom a warrant of execution
11 27 is issued, is pregnant, the execution shall not take place
11 28 until after the defendant is no longer pregnant. If a
11 29 defendant, for whom a warrant of execution is issued, is
11 30 suffering from such a diseased or deranged condition of the
11 31 mind as to prevent the defendant from knowing the nature and
11 32 quality of the act the defendant has been convicted of, or
11 33 from understanding that trial on the offense has taken place
11 34 and that execution proceedings are about to take place, or
11 35 otherwise causes the defendant to lack the capacity to
12 1 understand the sentence which has been imposed and to
12 2 participate in any legal proceedings relating to the sentence,
12 3 the execution shall not take place until after the defendant's
12 4 capacity is restored. If the director of the department of
12 5 corrections or the defendant's counsel files a request with
12 6 the court which issued the warrant of execution, alleging that
12 7 the defendant suffers from such a diseased or deranged
12 8 condition, a hearing on the matter shall be held in the manner
12 9 provided in section 812A.1. If a defendant was under the age
12 10 of eighteen at the time the offense was committed, the
12 11 defendant shall be sentenced as provided in subsection 1. For
12 12 the purposes of this section, "lethal injection" means a
12 13 continuous intravenous injection of a lethal substance
12 14 sufficient to cause death.

12 15 Sec. 8. NEW SECTION. 902.15 FIRST DEGREE MURDER,
12 16 KIDNAPPING, AND SEXUAL ABUSE.

12 17 A person who commits murder in the first degree,
12 18 kidnapping, and sexual abuse with respect to the same victim,
12 19 who is not mentally retarded or mentally ill, and who is age
12 20 eighteen or older at the time the offense is committed, shall
12 21 be eligible for a sentence of death under section 902.1,
12 22 subsection 2, if the victim was a minor.

12 23 For purposes of this section, "mentally retarded" means
12 24 significant subaverage general intellectual functioning
12 25 accompanied by significant deficits or impairments in adaptive
12 26 functioning manifested in the developmental period, but no
12 27 later than the age of eighteen years, and accompanied by
12 28 deficits in adaptive behavior.

12 29 For purposes of this section, "mentally ill" means the
12 30 condition of a person who is suffering from a chronic and
12 31 persistent serious mental disease or disorder and who, by
12 32 reason of that condition, lacks sufficient judgment to make
12 33 responsible decisions regarding treatment and is reasonably
12 34 likely to injure the person's self or others who may come into
12 35 contact with the person if the person is allowed to remain at
13 1 liberty without treatment.

13 2 Sec. 9. NEW SECTION. 902.16 DATA COLLECTION FOR DEATH
13 3 PENALTY.

13 4 1. The supreme court shall collect data on all murder,
13 5 kidnapping, and sexual abuse charges in which the death
13 6 penalty is or was not waived, which are filed and processed in
13 7 the courts in this state. This data may be used by the
13 8 supreme court to determine whether death sentences imposed are
13 9 excessive or disproportionate, or under the influence of
13 10 prejudice as a result of racial discrimination under section
13 11 814.28. The court shall make this data available to litigants
13 12 in death penalty cases.

13 13 2. Data collected by public officials concerning factors
13 14 relevant to the imposition of the death sentence shall be made
13 15 publicly available.

13 16 Sec. 10. NEW SECTION. 903C.1 EXECUTIONS == REFUSAL TO
13 17 PERFORM.

13 18 An employee of the state who may lawfully perform, assist,
13 19 or participate in the execution of a person pursuant to
13 20 section 902.1, and rules adopted by the department of
13 21 corrections, shall not be required to perform, assist, or
13 22 participate in the execution. State employees who refuse to
13 23 perform, assist, or participate in the execution of a person
13 24 shall not be discriminated against in any way, including but
13 25 not limited to employment, promotion, advancement, transfer,
13 26 licensing, education, training, or the granting of any
13 27 privileges or appointments because of the refusal to perform,
13 28 assist, or participate in the execution.

13 29 Sec. 11. Section 904.105, Code 2007, is amended by adding
13 30 the following new subsection:

13 31 NEW SUBSECTION. 9A. Adopt rules pursuant to chapter 17A
13 32 pertaining to executions of persons convicted of murder,
13 33 kidnapping, and sexual abuse under section 902.15. Rules
13 34 adopted shall include but are not limited to rules permitting
13 35 the witnessing of executions by members of the public and the

14 1 victim's family. Invitations to witness an execution shall at
14 2 least be extended to the following representatives of the news
14 3 media:
14 4 a. A representative from a wire service serving Iowa.
14 5 b. A representative from a broadcasting network serving
14 6 Iowa.
14 7 c. A representative from a television station located in
14 8 Iowa.
14 9 d. A representative from a radio station located in Iowa.
14 10 e. A representative from a daily newspaper published in
14 11 Iowa.
14 12 f. A representative from a weekly newspaper published in
14 13 Iowa.
14 14 g. A representative from the news media from the community
14 15 in which the condemned person resided, if that community is
14 16 located in Iowa.
14 17 Sec. 12. Rules of criminal procedure, Iowa court rules,
14 18 are amended by adding the following four sections of this Act.
14 19 Sec. 13. NEW RULE. 2.____ DEATH PENALTY == PROCEDURE.
14 20 2.____(1) If a notice of intent to seek the death penalty
14 21 has been filed, objections to the imposition of the death
14 22 penalty based upon allegations that a defendant was mentally
14 23 retarded at the time of the commission of the offense shall be
14 24 raised within the time provided for the filing of pretrial
14 25 motions under R.Cr.P. 2.11, Iowa court rules. The court may,
14 26 for good cause shown, allow late filing of the motion.
14 27 Hearing on the motion shall be held prior to trial and the
14 28 burden of proof shall be on the defendant to prove mental
14 29 retardation by a preponderance of the evidence. However, a
14 30 rebuttable presumption of mental retardation arises if a
14 31 defendant has an intelligence quotient of seventy or below. A
14 32 finding of the court that the evidence presented by the
14 33 defendant at the hearing does not preclude the imposition of
14 34 the death penalty under this rule and Iowa Code section 902.15
14 35 shall not preclude the introduction of evidence of mental
15 1 retardation during the penalty proceeding. If the court finds
15 2 that the evidence presented by the defendant does not preclude
15 3 the imposition of the death penalty, evidence of mental
15 4 retardation may be reviewed by the jury during the penalty
15 5 proceeding and the jury shall not be informed of the finding
15 6 in the initial proceeding at any time during the penalty
15 7 proceeding.
15 8 2.____(2) Upon a finding or plea that a defendant is guilty
15 9 of murder, kidnapping, and sexual abuse under Iowa Code
15 10 section 902.15, in an initial proceeding, if a notice of
15 11 intent to seek the death penalty has been filed and has not
15 12 been waived, the court shall conduct a separate penalty
15 13 proceeding to determine whether the defendant shall be
15 14 sentenced to death or to life imprisonment. The penalty
15 15 proceeding shall be conducted in the trial court before the
15 16 trial jury, or the court, if there is no jury, no sooner than
15 17 twenty-four hours after the return of the verdict or plea in
15 18 the initial proceeding. In the penalty proceeding, additional
15 19 evidence may be presented as to the conviction for murder,
15 20 kidnapping, and sexual abuse under section 902.15, or any
15 21 aggravating or mitigating circumstance which may exist.
15 22 Presentation of evidence which is relevant to the existence of
15 23 an aggravating or mitigating circumstance shall not be bound
15 24 by the rules of evidence. This subsection does not authorize
15 25 the introduction of any evidence secured in violation of the
15 26 Constitution of the United States or of the Constitution of
15 27 the State of Iowa. The state and the defendant or the
15 28 defendant's counsel shall be permitted to cross-examine
15 29 witnesses and to present arguments for or against a sentence
15 30 of death.
15 31 2.____(3) On conclusion of the presentation of the evidence
15 32 in the penalty proceeding, the state and the defendant or the
15 33 defendant's counsel shall be permitted to make closing
15 34 arguments, including any rebuttal arguments, in the same
15 35 manner as in the initial proceeding and the court shall submit
16 1 each of the following issues to the jury:
16 2 a. Whether one or more aggravating circumstances outweigh
16 3 any one or more mitigating circumstances.
16 4 b. Whether the defendant shall be sentenced to death.
16 5 If the case is not tried to a jury, the court shall
16 6 determine the issues.
16 7 2.____(4) The state must prove the issue in rule 2. ____ (3)(a)
16 8 beyond a reasonable doubt, and the jury, or the court if there
16 9 is no jury, shall return a special verdict of "yes" or "no" on
16 10 each issue.
16 11 2. ____ (5) If the case is tried to a jury, the court shall

16 12 charge the jury that:
16 13 a. It shall answer any issue "yes" if it agrees
16 14 unanimously.
16 15 b. It shall answer any issue "no" if the jurors
16 16 unanimously agree that the answer is "no" or if the jurors do
16 17 not unanimously agree that the answer is "yes".
16 18 2.____(6) Concurrently with the return of the special
16 19 verdicts under rule 2.____(3), the jury, or the court if there
16 20 is no jury, shall also return special verdicts as follows:
16 21 a. Which aggravating circumstances were established beyond
16 22 a reasonable doubt and were considered in reaching the verdict
16 23 returned on the issue specified in rule 2.____(3)(a).
16 24 b. Which mitigating circumstances were established and
16 25 were considered in reaching the verdict returned on the issue
16 26 specified in rule 2.____(3)(a).
16 27 2.____(7) If the jury, or the court if there is no jury,
16 28 returns an affirmative finding on all applicable issues, the
16 29 court shall sentence the defendant to death. If the jury or
16 30 the court returns a negative finding on any applicable issue,
16 31 the court shall sentence the defendant to the custody of the
16 32 director of the department of corrections for confinement for
16 33 the rest of the defendant's life.
16 34 2.____(8) After a verdict has been rendered it shall be
16 35 recorded on the jury verdict form and shall be read and
17 1 recorded in open court. The jurors shall be collectively
17 2 asked by the court whether the verdict returned is their true
17 3 and correct verdict. Even though no juror makes any
17 4 declaration to the contrary, the jury shall, if either party
17 5 so requests, be polled and each juror shall be separately
17 6 asked whether the verdict rendered by the jury foreperson is
17 7 the juror's true and correct verdict. If, upon either the
17 8 collective or the separate inquiry, any juror denies that the
17 9 verdict is the juror's verdict, the court shall refuse to
17 10 accept the verdict. The court may direct inquiry or permit
17 11 inquiry by counsel to ascertain whether any juror has been
17 12 subjected to coercion or has become confused during the jury
17 13 deliberation process. The court may, as appropriate, direct
17 14 the jury to resume deliberation in the case. If no
17 15 disagreement on the verdict is expressed by any of the jurors,
17 16 the court shall discharge the jury.
17 17 2.____(9) Provisions relating to deferred judgment,
17 18 deferred sentence, suspended sentence, reconsideration of
17 19 sentence, probation, parole, or work release contained in Iowa
17 20 Code chapters 901 through 909 do not apply to a conviction of
17 21 murder, kidnapping, and sexual abuse under Iowa Code section
17 22 902.15 if the defendant is sentenced to death.
17 23 Sec. 14. NEW RULE. 2.____ AUTOMATIC REVIEW == STAY OF
17 24 EXECUTION OF JUDGMENT.
17 25 2.____(1) A judgment of conviction and sentence of death
17 26 shall be reviewed automatically in the manner provided in Iowa
17 27 Code section 814.28, and the Iowa supreme court has exclusive
17 28 jurisdiction of the review.
17 29 2.____(2) Upon entry of judgment and sentence of death, the
17 30 trial court shall prepare a complete record and transcript of
17 31 the action in the manner provided in the rules of criminal
17 32 procedure and shall docket the record and transcript with the
17 33 clerk of the supreme court.
17 34 2.____(3) The execution of judgment of the trial court is
17 35 stayed as a matter of law from the time of its entry until the
18 1 judgment of the supreme court is certified to and entered by
18 2 the trial court. Upon entry of a judgment of the supreme
18 3 court which affirms the conviction and sentence, the stay of
18 4 execution of judgment terminates as a matter of law.
18 5 2.____(4) All court costs required due to the automatic
18 6 preparation of the record and transcript, docketing with the
18 7 supreme court, and stay of execution of judgment shall be
18 8 assessed to the state.
18 9 Sec. 15. NEW RULE. 2.____ ISSUANCE OF WARRANT.
18 10 2.____(1) Upon entry by the trial court of the judgment of
18 11 the supreme court affirming a judgment and sentence of death,
18 12 a district judge shall within five days of the entry issue a
18 13 warrant under the seal of the court for the execution of the
18 14 sentence of death. The warrant shall specifically set forth
18 15 the offense and the fact of conviction, shall state the
18 16 judgment and sentence of the court, shall state that the
18 17 judgment and sentence were affirmed by the supreme court and
18 18 the date of entry of judgment of the supreme court in the
18 19 trial court, and shall, subject to the requirements of Iowa
18 20 Code section 902.1, subsection 2, specify a range of five days
18 21 for execution of the defendant which shall be not less than
18 22 fifty nor more than sixty days after the date of entry in the

18 23 trial court of the judgment of the supreme court affirming the
18 24 judgment and sentence of death. The warrant shall be directed
18 25 to the director of the department of corrections commanding
18 26 the director to cause the warrant to be executed within the
18 27 dates specified. The trial court shall deliver the warrant to
18 28 the sheriff of the county in which judgment of conviction was
18 29 entered and the sheriff shall deliver the warrant to the
18 30 director of the department of corrections. The director of
18 31 the department of corrections shall acknowledge receipt of the
18 32 warrant and the defendant, and the sheriff shall return the
18 33 acknowledgment to the office of the clerk of the trial court
18 34 from which the warrant was issued.

18 35 2.____(2) Immediately after issuance of a warrant ordering
19 1 a sentence of death, the clerk of the trial court issuing the
19 2 warrant shall transmit by certified mail to the governor a
19 3 copy of the indictment, the plea, the verdict and special
19 4 findings, the affirmation of judgment and sentence by the
19 5 supreme court, and the complete transcript of the trial court.

19 6 2.____(3) Notwithstanding rule 2.____(1), if a defendant,
19 7 for whom a warrant of execution is issued, is pregnant, the
19 8 execution shall not take place until after the defendant is no
19 9 longer pregnant. Notwithstanding rule 2.____(1), if a
19 10 defendant, for whom a warrant of execution is issued, is
19 11 suffering from such a diseased or deranged condition of the
19 12 mind as to prevent the defendant from knowing the nature and
19 13 quality of the act the defendant has been convicted of, or
19 14 from understanding that trial on the offense has taken place
19 15 and that execution proceedings are about to take place, or to
19 16 otherwise cause the defendant to lack the capacity to
19 17 understand the sentence which has been imposed and to
19 18 participate in any legal proceedings relating to the sentence,
19 19 the execution shall not take place until after the defendant
19 20 is no longer suffering from the condition.

19 21 Sec. 16. NEW RULE. 2.____ EVIDENCE AT PENALTY PROCEEDING
19 22 WHERE DEATH SENTENCE REQUESTED.

19 23 2.____(1) At a reasonable time before the commencement of
19 24 initial proceedings in a murder, kidnapping, and sexual abuse
19 25 trial in which a sentence of death has been requested, each
19 26 party shall file and serve upon the other party the following:

19 27 a. A list of all aggravating or mitigating circumstances
19 28 which the party intends to prove during the sentencing
19 29 proceedings.

19 30 b. The names of all persons whom the party intends to call
19 31 as witnesses during the sentencing proceedings.

19 32 c. Notwithstanding rule 2.14, copies, or for inspection
19 33 purposes, the location, of all documents, including books,
19 34 papers, writings, drawings, graphs, charts, photographs,
19 35 telephone records, and other data compilations from which
20 1 information can be obtained, or other objects which the party
20 2 intends to offer into evidence during the sentencing
20 3 proceedings. If copies are not supplied to opposing counsel,
20 4 the party shall make the items available for inspection and
20 5 copying without order of the court.

20 6 2.____(2) In proceedings to determine whether the sentence
20 7 shall be death or life imprisonment, evidence may be presented
20 8 as to any matter which the trial court deems relevant to the
20 9 sentence, including but not limited to the nature,
20 10 circumstances, and manner of completion of the murder,
20 11 kidnapping, and sexual abuse, and the defendant's character,
20 12 background, history, and mental and physical condition. The
20 13 trial court shall admit any relevant admissible evidence
20 14 respecting any aggravating or mitigating circumstances, if the
20 15 party has included the circumstance on a list provided
20 16 pursuant to this rule, or good cause is shown for the failure
20 17 to do so.

20 18 Sec. 17. EFFECTIVE DATE == SEVERABILITY.

20 19 1. This Act takes effect January 1, 2008, and applies to
20 20 offenses committed on or after that date.

20 21 2. If any provision of this Act or the application thereof
20 22 to any person is invalid, the invalidity shall not affect the
20 23 provisions or application of this Act which can be given
20 24 effect without the invalid provisions or application and to
20 25 this end, the provisions of this Act are severable.

20 26 EXPLANATION

20 27 This bill amends the Iowa criminal code to provide for
20 28 punishment by death for murder, kidnapping, and sexual abuse
20 29 committed with respect to the same victim who is a minor if
20 30 the trial jury, or the judge if there is no jury, makes
20 31 specific findings and whether the jury believes the defendant
20 32 should be put to death in a separate penalty proceeding held
20 33 after the close of the initial trial proceeding. Under the

20 34 bill, a death sentence could be imposed if the murder would
20 35 constitute murder in the first degree and the state pleads and
21 1 proves the defendant also kidnapped and committed sexual abuse
21 2 against the murder victim who was a minor.
21 3 If a person is indigent and is charged with capital murder,
21 4 payment of costs for two attorneys is authorized. The supreme
21 5 court is required to establish standards for the competency of
21 6 counsel in death penalty cases. The state public defender is
21 7 charged with establishing teams of qualified lead and
21 8 cocounsel for death penalty cases, as well as conducting or
21 9 sponsoring specialized training programs for attorneys
21 10 representing persons who may be executed.
21 11 If such a case proceeds to trial and a notice of intent to
21 12 seek the death penalty has been filed, in addition to any
21 13 other defenses which may be presented to the charge, the
21 14 defendant may raise the issue of mental retardation during the
21 15 time of filing pretrial motions, and the defendant is entitled
21 16 to a rebuttable presumption of mental retardation if the
21 17 defendant establishes that the defendant has an intelligence
21 18 quotient of 70 or below.
21 19 Once the evidence is submitted to the jury, the court will
21 20 instruct the jury, at the defendant's request, that in
21 21 considering whether a sentence of death is justified, the
21 22 race, color, religious beliefs, national origin, or sex of the
21 23 defendant or of any victim is not to be considered. The
21 24 supreme court shall collect evidence relating to whether the
21 25 death sentences imposed are excessive, disproportionate, or
21 26 imposed under the influence of prejudice at trial which will
21 27 be available to litigants.
21 28 The sentence of death is imposed only when the trier of
21 29 fact (the jury or the court if the defendant has waived the
21 30 right to a jury trial) unanimously answers two questions
21 31 affirmatively: (1) whether aggravating circumstances
21 32 established beyond a reasonable doubt outweigh any mitigating
21 33 circumstances that may exist; and (2) whether the defendant
21 34 should be sentenced to death. Mitigating factors the trier of
21 35 fact may consider include the following: the defendant was
22 1 under the influence of an extreme mental or emotional
22 2 disturbance; the age of the defendant; the defendant's ability
22 3 to appreciate the wrongfulness of the conduct due to mental
22 4 disease but not to a degree to constitute a defense; the
22 5 defendant has no significant prior criminal history; the
22 6 defendant was under extreme duress; the defendant did not
22 7 directly commit the murder, kidnapping, and sexual abuse; and
22 8 the defendant's character or record or the circumstances of
22 9 the offense. The sentencing proceeding is conducted
22 10 separately from the finding of guilt or innocence by the same
22 11 trier of fact.
22 12 For the sentencing proceeding, the trier of fact (the jury
22 13 or the court if the defendant has waived the right to have the
22 14 jury hear the proceedings) is to weigh any aggravating
22 15 circumstances established beyond a reasonable doubt by the
22 16 state against any of the enumerated mitigating circumstances
22 17 which may be presented by the defendant. Evidence of certain
22 18 juvenile delinquency adjudications is not admissible in any
22 19 proceeding to determine the sentence. If the jury fails to
22 20 agree unanimously on the required affirmative findings, the
22 21 penalty would be life imprisonment.
22 22 The death penalty sentence would be reviewed automatically
22 23 by the supreme court. The supreme court shall review the
22 24 trial and judgment separately from the sentencing proceeding.
22 25 If the supreme court finds error in the sentencing proceeding,
22 26 the supreme court may remand the case back to district court
22 27 for a new sentencing hearing. The bill requires the supreme
22 28 court to examine whether the sentence is excessive or
22 29 disproportionate to penalties in similar cases. If affirmed
22 30 by the supreme court, the penalty would be accomplished by
22 31 lethal injection. The bill requires the board of corrections
22 32 to adopt rules pertaining to executions, including rules
22 33 pertaining to the witnessing of executions. The bill requires
22 34 the supreme court to collect data on all murder, kidnapping,
22 35 and sexual abuse in which the death penalty is or was not
23 1 waived. The data may be used by the supreme court to
23 2 determine whether death sentences imposed are excessive or
23 3 under the influence of prejudice.
23 4 The bill further provides that in order to receive a
23 5 sentence of death, the defendant must be at least 18 years of
23 6 age at the time the offense is committed, must not be mentally
23 7 ill or mentally retarded, and must have been a major
23 8 participant in the commission of the crime or must have shown
23 9 a manifest indifference to human life.

23 10 A person who is sentenced to death, but who is pregnant
23 11 when the warrant of execution is issued, is not to be executed
23 12 until the person is no longer pregnant. A procedure is also
23 13 provided to stay execution of a condemned inmate who becomes
23 14 insane after conviction but before execution.
23 15 An employee of the state shall not be required to perform
23 16 or assist in any execution and shall not be discriminated
23 17 against for refusing to participate.
23 18 The bill contains severability provisions and takes effect
23 19 January 1, 2008, and applies only to offenses committed on or
23 20 after that date.
23 21 LSB 2416XS 82
23 22 jm:rj/je/5